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REMARKS

Claims 37-61 are pending in the present application. In the Office Action mailed September 9, 2004, claims 52-61 were withdrawn from further consideration pursuant to 37 CFR 1.142(b). The Examiner rejected claim 48 under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. The Examiner next rejected claims 45 and 46 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Claims 37, 38, 47-49, and 51 were rejected under 35 U.S.C. §103(a) as being unpatentable over Bornn (USP 5,564,429). Claims 39 and 43-46 were rejected under 35 U.S.C. §103(a) as being unpatentable over Bornn. Claim 50 was rejected under 35 U.S.C. §103(a) as being unpatentable over Bornn in view of Morgan et al. (USP 5,782,878).

Applicant appreciates the indication of allowability of the subject matter contained in claims 40-42. Applicant has amended the claims accordingly.

Claim 37 has been amended to incorporate the subject matter of allowable claim 40. Claim 40 has, therefore, been cancelled. As such, Applicant believes claim 37 is in condition for allowance. Claim 41 has been amended to correct the dependence from cancelled claim 40 such that claim 41 now depends from allowable claim 37. As such, claim 37, and those claims that depend therefrom, are in condition for allowance.

The Examiner rejected claim 48 under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement stating that "on demand from the patient" was not described in the original specification. Applicant respectfully disagrees.

The Specification recites that "[t]he use of the ECG device starts when the patient experiences symptoms 104. If the patient is not familiar with using the device and the overall process 106, 108, the patient telephones the hospital 110 to acquire step by step instructions once symptoms appear." Specification pg. 9, lns. 7-10. The Specification further includes "if the patient is familiarized with the apparatus and the process 106, 122, the patient attaches the electrodes 124 and activates the ECG device 126, which then begins to acquire the ECG signals 118 from the patient at a location remote from the health care facility." Specification pg. 9, lns. 19-22. Upon determining there is no

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cardiac cause of the systems that demanded use of the device, "the clinician then reassures the patient 140 ... and instructs the patient to disconnect the electrodes 144." Specification pg. 10, lns. 8-10.

As supported in the Specification, the patient applies the device, activates the device, and removes the device after use – i.e. the device is operable "on demand" from a patient. As defined in Merriam-Webster Online (a copy included herewith), 'on demand' is defined as 'when requested or needed'. As stated in above cited sections of the Specification, the apparatus of the present invention is operable upon a patients' request or patients' determined need. As such, the recitation of an apparatus operable "on demand from a patient", as called for in claim 48, is clearly supported in the Specification. Accordingly, Applicant believes claim 48 clearly satisfies the requirements of 35 U.S.C. §112, first paragraph. Accordingly, Applicant respectfully requests withdrawal of the §112, first paragraph rejection of claim 48.

The Examiner next rejected claims 45 and 46 under 35 U.S.C. §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Although the Examiner has indicated the rejection applies to claims 45 and 46, the substantive remarks are directed to claims 44 and 45. Applicant assumes then that the Examiner meant to reject claims 44 and 45 under §112. Applicant has amended claims 44 and 45 to clarify that which is called for therein. As amended claims 44 and 45 further define the apparatus as being adapted to transmit the ECG data and the audio and video data to the health care provider and the mode of such transmission. As such, Applicant believes claims 44 and 45 are in accordance the requirements of 35 U.S.C. §112, second paragraph. If the Examiner meant to reject claim 46 under §112, Applicant requests clarification.

Claims 52-61, deemed drawn to a non-elected invention, are hereby cancelled without prejudice. Accordingly, all claims without an indication of allowability have been cancelled, without prejudice. The only claims that remain contain subject matter indicated as allowable in the Office Action of September 9, 2004. As such, Applicant anticipates a Notice of Allowance of claims 37-39 and 41-51.

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Applicant appreciates the Examiner's consideration of these Amendments and Remarks and cordially invites the Examiner to call the undersigned, should the Examiner consider any matters unresolved.

Respectfully submitted,



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